



February 21, 2006

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## ENGROSSED SENATE BILL No. 359

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DIGEST OF SB 359 (Updated February 16, 2006 3:05 pm - DI 87)

**Citations Affected:** IC 4-13; IC 4-13.6; IC 5-22.

**Synopsis:** Procurement and state public works. Provides that advance payment may be made for equipment or software acquired by a state agency, regardless of cost, with the prior approval of the budget agency under certain circumstances. Provides discretion to determine when retainage on a state public works contract should be placed in an escrow account. Permits an invitation to bid to contain evaluation criteria other than the specific criteria described in the statute. Authorizes a purchasing agency to conduct discussions with bidders  
(Continued next page)

**Effective:** July 1, 2006.

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### Hershman

(HOUSE SPONSORS — MESSER, RESKE)

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January 10, 2006, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

January 26, 2006, amended, reported favorably — Do Pass.

February 1, 2006, read second time, ordered engrossed.

February 2, 2006, engrossed. Read third time, passed. Yeas 47, nays 2.

#### HOUSE ACTION

February 7, 2006, read first time and referred to Committee on Government and Regulatory Reform.

February 21, 2006, amended, reported — Do Pass.

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before awarding a contract under an invitation for bids or after receiving quotes. Authorizes use of a reverse auction to issue requests for proposals (RFP) and to receive proposals. Makes other changes relating to reverse auctions. Eliminates the requirement for making a written determination as a condition to award a contract using an RFP. Permits information obtained from an offeror's proposal to be used in discussions with other offerors under certain circumstances. Requires a purchasing agency to maintain a bid register documenting negotiations with bidders. Provides that an information technology, life sciences, transportation, or logistics business that employs more than 100 persons or that has annual sales of more than \$5,000,000 is not eligible for a small business preference. Repeals statutes: (1) making bidding the default procurement procedure; (2) relating to changes in bid prices; (3) that prohibit the use of a reverse auction to purchase certain construction equipment; (4) relating to conducting discussions with offerors during an RFP process; and (5) permitting adoption of rules or policies relating to the use of an RFP in place of competitive bidding. Makes technical changes.

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February 21, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 359

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-13-2-20, AS AMENDED BY P.L.1-2005,  
2 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2006]: Sec. 20. (a) Except as otherwise provided in this  
4 section, IC 12-17-19-19, or IC 12-8-10-7, payment for any services,  
5 supplies, materials, or equipment shall not be paid from any fund or  
6 state money in advance of receipt of such services, supplies, materials,  
7 or equipment by the state.

8 (b) With the prior approval of the budget agency, payment may be  
9 made in advance for any of the following:

- 10 (1) War surplus property.
- 11 (2) Property purchased or leased from the United States
- 12 government or its agencies.
- 13 (3) Dues and subscriptions.
- 14 (4) License fees.
- 15 (5) Insurance premiums.
- 16 (6) Utility connection charges.
- 17 (7) Federal grant programs where advance funding is not

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prohibited and, except as provided in subsection (i), the contracting party posts sufficient security to cover the amount advanced.

(8) Grants of state funds authorized by statute.

(9) Employee expense vouchers.

(10) Beneficiary payments to the administrator of a program of self-insurance.

(11) Services, supplies, materials, or equipment to be received from an agency or from a body corporate and politic.

(12) Expenses for the operation of offices that represent the state under contracts with the Indiana economic development corporation and that are located outside Indiana.

(13) Services, supplies, materials, or equipment to be used for more than one (1) year under a discounted contractual arrangement funded through a designated leasing entity.

(14) Maintenance of equipment and maintenance of software ~~not exceeding an annual amount of one thousand five hundred dollars (\$1,500) for each piece of equipment or each software license; if there are appropriate contractual safeguards for refunds as determined by the budget agency.~~

(15) Exhibits, artifacts, specimens, or other unique items of cultural or historical value or interest purchased by the state museum.

(c) Any state agency and any state college or university supported in whole or in part by state funds may make advance payments to its employees for duly accountable expenses exceeding ten dollars (\$10) incurred through travel approved by the employee's respective agency director in the case of a state agency and by a duly authorized person in the case of any such state college or university.

(d) The auditor of state may, with the approval of the budget agency and of the commissioner of the Indiana department of administration:

(1) appoint a special disbursing officer for any state agency or group of agencies where it is necessary or expedient that a special record be kept of a particular class of disbursements or where disbursements are made from a special fund; and

(2) approve advances to the special disbursing officer or officers from any available appropriation for the purpose.

(e) The auditor of state shall issue the auditor's warrant to the special disbursing officer to be disbursed by the disbursing officer as provided in this section. Special disbursing officers shall in no event make disbursements or payments for supplies or current operating expenses of any agency or for contractual services or equipment not

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1 purchased or contracted for in accordance with this chapter and  
 2 IC 5-22. No special disbursing officer shall be appointed and no money  
 3 shall be advanced until procedures covering the operations of special  
 4 disbursing officers have been adopted by the Indiana department of  
 5 administration and approved by the budget agency. These procedures  
 6 must include the following provisions:

7 (1) Provisions establishing the authorized levels of special  
 8 disbursing officer accounts and establishing the maximum  
 9 amount which may be expended on a single purchase from special  
 10 disbursing officer funds without prior approval.

11 (2) Provisions requiring that each time a special disbursing officer  
 12 makes an accounting to the auditor of state of the expenditure of  
 13 the advanced funds, the auditor of state shall request that the  
 14 Indiana department of administration review the accounting for  
 15 compliance with IC 5-22.

16 (3) A provision that, unless otherwise approved by the  
 17 commissioner of the Indiana department of administration, the  
 18 special disbursing officer must be the same individual as the  
 19 procurements agent under IC 4-13-1.3-5.

20 (4) A provision that each disbursing officer be trained by the  
 21 Indiana department of administration in the proper handling of  
 22 money advanced to the officer under this section.

23 (f) The commissioner of the Indiana department of administration  
 24 shall cite in a letter to the special disbursing officer the exact purpose  
 25 or purposes for which the money advanced may be expended.

26 (g) A special disbursing officer may issue a check to a person  
 27 without requiring a certification under IC 5-11-10-1 if the officer:

28 (1) is authorized to make the disbursement; and

29 (2) complies with procedures adopted by the state board of  
 30 accounts to govern the issuance of checks under this subsection.

31 (h) A special disbursing officer is not personally liable for a check  
 32 issued under subsection (g) if:

33 (1) the officer complies with the procedures described in  
 34 subsection (g); and

35 (2) funds are appropriated and available to pay the warrant.

36 (i) For contracts entered into between the department of workforce  
 37 development or the Indiana commission on vocational and technical  
 38 education and:

39 (1) a school corporation (as defined in IC 20-18-2-16); or

40 (2) a state educational institution (as defined in IC 20-12-0.5-1);

41 the contracting parties are not required to post security to cover the  
 42 amount advanced.

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SECTION 2. IC 4-13.6-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) There is established a certification board. The following persons shall serve on the certification board:

(1) The ~~state building commissioner~~, **code compliance officer of the department of homeland security**.

(2) The ~~chief engineer~~ **director of engineering** of the department of natural resources.

(3) The director.

(b) The board shall administer IC 4-13.6-4.

SECTION 3. IC 4-13.6-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) If the estimated cost of a public works project is one hundred fifty thousand dollars (\$150,000) or more, the division shall include as part of the public works contract provisions for the retainage of portions of payments by the division to the contractor, by the contractor to subcontractors, and for the payment of subcontractors and suppliers by the contractor. The contract must provide that the division may withhold from the contractor sufficient funds from the contract price to pay subcontractors and suppliers as provided in section 4 of this chapter.

(b) A public works contract and contracts between contractors and subcontractors, if portions of the public works contract are subcontracted, ~~must~~ **may** include a provision that at the time any retainage is withheld, the division or the contractor, as the case may be, ~~shall~~ **may** place the retainage in an escrow account, **as mutually agreed**, with:

(1) a bank;

(2) a savings and loan institution;

(3) the state of Indiana; or

(4) an instrumentality of the state of Indiana;

as escrow agent. The parties to the contract shall select the escrow agent by mutual agreement. The parties to the agreement shall enter into a written agreement with the escrow agent.

(c) The escrow agreement must provide the following:

(1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its discretion.

(2) The escrow agent shall hold the escrowed principal and income until it receives notice from both of the other parties to the escrow agreement specifying the percentage of the escrowed principal to be released from the escrow and the persons to whom this percentage is to be released. When it receives this notice, the escrow agent shall promptly pay the designated percentage of

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escrowed principal and the same percentage of the accumulated escrowed income to the persons designated in the notice.

(3) The escrow agent shall be compensated for its services as the parties may agree. The compensation shall be a commercially reasonable fee commensurate with fees being charged at the time the escrow fund is established for the handling of escrow accounts of like size and duration. The fee must be paid from the escrowed income of the escrow account.

(d) The escrow agreement may include other terms and conditions that are not inconsistent with subsection (c). Additional provisions may include provisions authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements and provisions limiting the liability of the escrow agent.

SECTION 4. IC 5-22-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) A purchasing agent ~~shall~~ **may** issue an invitation for bids.

(b) An invitation for bids must include the following:

(1) A purchase description.

(2) All contractual terms and conditions that apply to the purchase.

(3) A statement of ~~the evaluation criteria that will be used, including any of the following:~~ **which, if any, of the following will be used to evaluate bids:**

(A) Inspection.

(B) Testing.

(C) Quality.

(D) Workmanship.

(E) Delivery.

(F) Suitability for a particular purpose.

(G) The requirement imposed under IC 5-22-3-5.

**(H) Any other evaluation criteria stated in the invitation for bids.**

(4) The **procedure for opening the bids, including the date, time, and place for opening the bids.**

(5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.

(6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

**(7) A statement concerning whether, and the procedures**

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under which, discussions may be conducted with bidders before a contract is awarded. The procedures for conducting discussions with bidders must be consistent with fair competition among all bidders.

SECTION 5. IC 5-22-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) An employee of the purchasing agency shall open bids publicly in the presence of one (1) or more witnesses at the time and place designated other employees of the purchasing agency according to the procedure stated in the invitation for bids as required by section 2(b)(4) of this chapter.

(b) Individuals other than employees of the purchasing agency may not be present at an opening of bids unless the bids are opened publicly.

SECTION 6. IC 5-22-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. Bids must be:

- (1) unconditionally accepted without alteration or correction; except as provided in sections 11 through 13 of this chapter;
- (1) opened so as to avoid disclosure of contents to competing bidders during the process of negotiation; and
- (2) evaluated based on the requirements provided in the invitation for bids.

SECTION 7. IC 5-22-7-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) The purchasing agency shall maintain the following information:

- (1) The name of each bidder;
- (2) The amount of each bid;
- (3) Other information required by this article and rules adopted under this article.

prepare a bid register.

(b) The bid register must contain the following:

- (1) A copy of all documents that are included as part of the invitation for bids.
- (2) A list of all persons to whom copies of the invitation for bids were given.
- (3) A list of all bids received. The list of bids received must include the following information:
  - (A) The name and address of each bidder.
  - (B) The dollar amount of each bid.
  - (C) The name of the successful bidder and the dollar amount of that bidder's bid.
- (4) The basis on which the award was made.
- (5) Documentation of the purchasing agency's negotiating

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process with bidders. The documentation must include the following:

(A) A log of the date and times of each meeting with a bidder. The log must include the identity of the bidder.

(B) A description of the nature of all communications with each bidder.

(C) Subject to subdivision (6), a copy of all written communications, including electronic communications, with each bidder.

(6) The entire contents of the contract file except for proprietary information included with a bid, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the invitation for bids.

(b) (c) The information described in subsection (a) bid register is subject to public inspection after each contract award.

SECTION 8. IC 5-22-7.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) A purchasing agency may conduct a reverse auction for the purchase of supplies by using an Internet purchasing site to:

(1) issue an invitation for bids **or request for proposals**; and

(2) receive bids **or proposals**.

(b) Except as provided in this chapter, a purchasing agency, ~~and~~ a bidder, **and an offeror** must comply with the requirements of this article when participating in a reverse auction.

**(c) A purchasing agency may obtain pricing through means other than a reverse auction before conducting a reverse auction.**

SECTION 9. IC 5-22-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Before conducting a reverse auction, the purchasing agency must adopt written policies that do the following:

(1) Establish procedures for all the following:

(A) Transmitting notices, solicitations, and specifications.

(B) Receiving offers.

(C) Making payments.

(D) Protecting

(i) the identity of **a bidder or** an offeror. ~~and~~

(ii) the amount of an offer until the time fixed for the opening of offers.

(E) For a reverse auction, providing for the display of the amount of each offer previously submitted for public viewing.

(F) Establishing the deadline by which offers must be received

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and will be considered to be open and available for public inspection.

(G) Establishing the procedure for the opening of offers.

(2) Require the purchasing agency to maintain adequate documentation regarding reverse auctions so that the transactions may be audited as provided by law.

(b) Written policies that comply with rules for an Internet public purchasing site adopted by the Indiana department of administration under IC 4-13-17-4 satisfy the requirements of this section.

SECTION 10. IC 5-22-7.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. For purposes of ~~IC 5-22-7-6~~, a bid made through an Internet purchasing site is considered to be opened when a computer generated record of the information contained in all bids for a proposed purchase that were received by the site not later than the posted bid deadline is reviewed publicly by **After bids or proposals are received**, the purchasing agency in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids: **may conduct discussions with bidders or offerors as provided in IC 5-22-7 or IC 5-22-9 before making an award.**

SECTION 11. IC 5-22-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) This section applies only if the purchasing agent expects the purchase to be:

(1) at least twenty-five thousand dollars (\$25,000); and

(2) not more than seventy-five thousand dollars (\$75,000).

(b) A purchasing agent may purchase supplies under this section by inviting quotes from at least three (3) persons known to deal in the lines or classes of supplies to be purchased.

(c) The purchasing agent shall mail an invitation to quote to the persons described in subsection (b) at least seven (7) days before the time fixed for receiving quotes.

(d) If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive offeror for each line of class of supplies required. **After receiving and opening quotes, the purchasing agency may conduct discussions with offerors as provided in IC 5-22-7 before making an award.**

(e) The purchasing agent may reject all quotes.

(f) If the purchasing agent does not receive a quote from a responsible and responsive offeror, the purchasing agent may purchase the supplies under IC 5-22-10-10.

SECTION 12. IC 5-22-9-1 IS AMENDED TO READ AS

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1       FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. ~~When A purchasing~~  
 2       agent ~~makes a written determination that the use of competitive sealed~~  
 3       bidding is either not practicable or not advantageous to the  
 4       governmental body, the purchasing agent may award a contract using  
 5       the procedure provided by this chapter. ~~instead of competitive sealed~~  
 6       bidding under IC 5-22-7.

7       SECTION 13. IC 5-22-9-2 IS AMENDED TO READ AS  
 8       FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. The purchasing  
 9       agent shall solicit proposals through a request for proposals, which  
 10      must include the following:

11       (1) The factors or criteria that will be used in evaluating the  
 12      proposals.

13       (2) A statement concerning the relative importance of price and  
 14      the other evaluation factors.

15       (3) A statement concerning whether the proposal must be  
 16      accompanied by a certified check or other evidence of financial  
 17      responsibility, which may be imposed in accordance with rules of  
 18      the governmental body.

19       (4) A statement concerning whether discussions **and negotiations**  
 20      may be conducted with responsible offerors, ~~who submit~~  
 21      proposals ~~determined to be reasonably susceptible of being~~  
 22      selected for in the discretion of the purchasing agency, **before**  
 23      an award is made.

24      SECTION 14. IC 5-22-9-9 IS AMENDED TO READ AS  
 25      FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. Offerors must be  
 26      accorded fair and equal treatment with respect to any opportunity for  
 27      discussion and revisions of proposals. In conducting discussions with  
 28      an offeror, information derived from proposals submitted by competing  
 29      offerors may ~~not be disclosed:~~ **used in discussion only if the identity**  
 30      **of the offeror providing the information is not disclosed to others.**  
 31      **The purchasing agency must provide equivalent information to all**  
 32      **offerors with which the purchasing agency chooses to have**  
 33      **discussions.**

34      SECTION 15. IC 5-22-14-3, AS AMENDED BY P.L.4-2005,  
 35      SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36      JULY 1, 2006]: Sec. 3. (a) A governmental body may adopt rules to  
 37      implement this chapter. The Indiana department of administration shall  
 38      adopt rules under IC 4-22-2 to implement this chapter.

39      (b) The rules adopted by a governmental body must establish  
 40      criteria for determining qualifications as a small business. In  
 41      establishing criteria, the rules may use any standards established for  
 42      determination of small business status that are used by an agency of the

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1 federal government. A governmental body may also receive assistance  
 2 from the Indiana economic development corporation to establish  
 3 criteria or to implement the rules.

4 (c) The rules adopted by a governmental body may consider the  
 5 number of employees employed by an offeror and the dollar volume of  
 6 the offeror's business. The rules must provide that when computing the  
 7 size of an offeror, the annual sales and receipts of the offeror and all of  
 8 its affiliates must be included.

9 (d) The rules adopted by a governmental body must include the  
 10 following criteria:

11 (1) A wholesale business is not a small business if its annual sales  
 12 for its most recently completed fiscal year exceed four million  
 13 dollars (\$4,000,000).

14 (2) A construction business is not a small business if its average  
 15 annual receipts for the preceding three (3) fiscal years exceed four  
 16 million dollars (\$4,000,000).

17 (3) A retail business or business selling services is not a small  
 18 business if its annual sales and receipts exceed five hundred  
 19 thousand dollars (\$500,000).

20 (4) A manufacturing business is not a small business if it employs  
 21 more than one hundred (100) persons.

22 **(5) A business in any of the following sectors is not a small**  
 23 **business if it employs more than one hundred (100) persons or**  
 24 **if its annual sales exceed five million dollars (\$5,000,000):**

25 **(A) Information technology.**

26 **(B) Life sciences.**

27 **(C) Transportation.**

28 **(D) Logistics.**

29 SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 30 JULY 1, 2006]: IC 5-22-7-1; IC 5-22-7-6; IC 5-22-7-11; IC 5-22-7.5-8;  
 31 IC 5-22-9-6; IC 5-22-9-8.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 359, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, delete lines 14 through 29.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 359 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 1.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 359, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 33, reset in roman "(4) The".

Page 5, line 33, after "The" insert "**procedure for opening the bids, including the date,**".

Page 5, line 33, delete "time" and insert "time,".

Page 5, line 33, reset in roman "and place for opening the bids.".

Page 5, line 34, delete "(5) (4)" and insert "(5)".

Page 5, line 38, delete "(6) (5)" and insert "(6)".

Page 5, line 41, delete "(6)" and insert "(7)".

Page 6, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 5. IC 5-22-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. **(a) An employee of the purchasing agency shall open bids publicly in the presence of one (1) or more witnesses at the time and place designated other employees of the purchasing agency according to the procedure stated in the invitation for bids as required by section 2(b)(4) of this chapter.**

**(b) Individuals other than employees of the purchasing agency may not be present at an opening of bids unless the bids are opened publicly."**



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Page 6, between lines 11 and 12, begin a new paragraph and insert:  
 "SECTION 7. IC 5-22-7-9 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) The purchasing  
 agency shall maintain the following information:

- (1) The name of each bidder.
- (2) The amount of each bid.
- (3) Other information required by this article and rules adopted  
 under this article.

prepare a bid register.

(b) The bid register must contain the following:

- (1) A copy of all documents that are included as part of the  
 invitation for bids.
- (2) A list of all persons to whom copies of the invitation for  
 bids were given.
- (3) A list of all bids received. The list of bids received must  
 include the following information:
  - (A) The name and address of each bidder.
  - (B) The dollar amount of each bid.
  - (C) The name of the successful bidder and the dollar  
 amount of that bidder's bid.
- (4) The basis on which the award was made.
- (5) Documentation of the purchasing agency's negotiating  
 process with bidders. The documentation must include the  
 following:
  - (A) A log of the date and times of each meeting with a  
 bidder. The log must include the identity of the bidder.
  - (B) A description of the nature of all communications with  
 each bidder.
  - (C) Subject to subdivision (6), a copy of all written  
 communications, including electronic communications,  
 with each bidder.
- (6) The entire contents of the contract file except for  
 proprietary information included with a bid, such as trade  
 secrets, manufacturing processes, and financial information  
 that was not required to be made available for public  
 inspection by the terms of the invitation for bids.

(b) (c) The information described in subsection (a) bid register is  
 subject to public inspection after each contract award."

Page 8, between lines 28 and 29, begin a new paragraph and insert:  
 "SECTION 14. IC 5-22-14-3, AS AMENDED BY P.L.4-2005,  
 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JULY 1, 2006]: Sec. 3. (a) A governmental body may adopt rules to

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implement this chapter. The Indiana department of administration shall adopt rules under IC 4-22-2 to implement this chapter.

(b) The rules adopted by a governmental body must establish criteria for determining qualifications as a small business. In establishing criteria, the rules may use any standards established for determination of small business status that are used by an agency of the federal government. A governmental body may also receive assistance from the Indiana economic development corporation to establish criteria or to implement the rules.

(c) The rules adopted by a governmental body may consider the number of employees employed by an offeror and the dollar volume of the offeror's business. The rules must provide that when computing the size of an offeror, the annual sales and receipts of the offeror and all of its affiliates must be included.

(d) The rules adopted by a governmental body must include the following criteria:

(1) A wholesale business is not a small business if its annual sales for its most recently completed fiscal year exceed four million dollars (\$4,000,000).

(2) A construction business is not a small business if its average annual receipts for the preceding three (3) fiscal years exceed four million dollars (\$4,000,000).

(3) A retail business or business selling services is not a small business if its annual sales and receipts exceed five hundred thousand dollars (\$500,000).

(4) A manufacturing business is not a small business if it employs more than one hundred (100) persons.

**(5) A business in any of the following sectors is not a small business if it employs more than one hundred (100) persons or if its annual sales exceed five million dollars (\$5,000,000):**

**(A) Information technology.**

**(B) Life sciences.**

**(C) Transportation.**

**(D) Logistics."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 359 as printed January 27, 2006.)

BUCK, Chair

Committee Vote: yeas 7, nays 3.

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